

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 725 OF 2006

State Bank of India ...Appellant
V/s.
Shri Kisanchand Khanchand Vaswani & Ors....Respondents

Mr.A.G. Damle for the Appellant.
Mr.V.G. Majumdar for Respondent No.1.

CORAM : V.M. KANADE, J.

DATED : JULY 4, 2007

P.C. :-

1. Heard the learned Counsel for the appellant.
2. The learned Counsel submits that the substantial question of law in the present case is whether in the case of execution of continuing guarantee by a surety, whether the provisions of Limitation Act become inapplicable and he is precluded from being discharged of surety on account of variance of the contract.
3. He submitted that in the present case, the trial court had decreed the suit which was filed by him against original defendant nos.1 to 3. Defendant no.3 was a surety in the said transaction and had executed a

continuing guarantee which was taken on record at Exhibit 57. He submitted that the trial court decreed the suit and against this order, the original defendant no.3 preferred an appeal before the lower Appellate court. The Lower Appellate court, however, allowed the appeal and set aside the judgment and decree against defendant no.3 by recording finding that the suit was barred by limitation qua the said appellant and he was also discharged as surety on account of variance of the contract.

4. Shri Damle, learned Counsel submitted that the lower appellate Court had erred in arriving at the said finding. He invited my attention to two clauses of the guarantee at Exhibit 57 which was executed by original defendant no.3 in which he had specifically agreed that the guarantee would continue inspite of any variance of contract between the principal borrower and the bank and that he would be liable to pay the amount due as long as the said amount was not paid by the principal borrower. He submitted that in view of these clauses, the lower Appellate Court had erred in holding that the suit was

barred by limitation and that the surety was discharged on account of revival of the loan in 1985 without obtaining the consent of the defendant no.3.

5. It is not possible to accept the submission made by the appellant. The lower Appellate Court after having perused the documentary evidence has observed that the cause of action has arisen in the year 1982 and that the bank had revived the loan document after obtaining consent of original defendant nos.1 and 2. However, the consent of original defendant no.3 was not obtained. I do not see any reason to interfere with the finding of fact recorded by the lower Appellate Court. There is no merit in the submission made by the learned Counsel for the appellant that the question which is raised in this appeal is substantial question of law.

6. Second Appeal is, therefore, dismissed. Civil Application is, accordingly, disposed of.

(V.M. KANADE, J.)